REMARKS/ARGUMENTS

The Office Action dated November 17, 2004 claims 1-3, 6-7, 11, and 14 were rejected under 35 U.S.C. 102(e). Claims 8-10, 12-13, 15-16, and 18-23 were rejected under 35 U.S.C. 103(a). An Examiner Interview was held between Joshua Korver and Examiner Suresh Suryawanshi on February 16, 2005. Claims 1, 11, and 18 have been amended. Claims 1-23 remain pending. Applicants respectfully request allowance of all pending claims.

I. Rejections under 35 U.S.C. §102(e)

Claims 1-3, 6-7, 11 and 14 were rejected in the Office Action under 35 U.S.C. §102(e) as being anticipated by Chung-Chih (US Patent no 6,470,456 B1). Claims 4 and 5 are also addressed as rejected under this section. Applicants respectfully disagree as explained below.

As explained during the Examiner Interview of February 16, 2005, Chung-Chih and the claimed invention employ different methods for determining utilization of the computer. (See Chung-Chih column 2, line 61- column 3, line 12 and Specification page 11, lines 10-15) The claimed invention calculates the utilization or activates the CPU throttler, " while a CPU of the computer is idle" (Claim 1), or "when the CPU enters an idle state" (Claim 18). This is very different from Chun-Chih where an occurrence frequency of idle signals sent from the operating system (OS) is calculated during a time interval to obtain the utilization ratio. (See Chung-Chih column 3, lines 4-12) The time interval of Chung-Chih can be at any time during the operation of the CPU, so that the calculation of the utilization ration does not occur necessarily when the CPU is idle. Causing the CPU to calculate its utilization during idle time has many advantages.

(See Specification page 9, lines 5-12). Independent claims 1, 11, and 18 have been amended to further clarify the definition of "idle" as it is used in the claimed invention, so that it is understood that "idle" does not mean that the CPU is doing nothing. (See Specification page 15, lines 9-13) Since Chung-Chih measures the occurrence frequency of idle threads, while, in contrast, the claimed invention calculates utilization during an idle state, Chung-Chih does not teach all the limitations of the claimed invention. As a result, claims 1 and 11 are not anticipated by Chung-Chih under 35 U.S.C. 102(e).

Claims 2-7 are dependent upon claim 1, while claim 14 is dependent upon claim 11. Therefore claims 2-7 and 14 are also not anticipated by Chung-Chih for at least the reasons stated above.

II. Rejections under 35 U.S.C. § 103

1.) Claims 8-10 and 12-13 were rejected in the Office Action under 35 U.S.C. §103(a) as being unpantentable over Chung-Chih (US Patent no 6,470,456 B1) in view of an official notice. Applicants respectfully disagree as explained below.

First, the rejections under 35 U.S.C. 103(a) of claims dependent on claims 1 and 11 are predicated on the above-stated 35 U.S.C. 102(e) rejections cited against claims 1 and 11. As stated above, claims 1 and 11 are clearly patentable under 35 U.S.C. 102(e), and therefore, the Office Action's 35 U.S.C. 103(a) assertions against claims dependent from claims 1 and 11 also fail.

Furthermore, Applicants object to the assertion that the integration of a system policy related to a temperature sensor, a battery level, or a switching latency of the CPU into the utilization calculation of the claimed invention are obvious according to official notice without documentary support. "It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." (MPEP 2144.03A) Applicants assert that the official notice taken against the limitations of claims 8-10 and 12-13 are improper in this case. Integration of these limitations to throttle the CPU is not trivial as demonstrated by the explanation of these limitations in the specification. (See Specification Figures 3, 4, 5, 7, 9, 10; page 8, lines 9-25; page 12, line 6 - page 14, line 21; page 16, lines 22-30; page 19, lines 7-27; page 20, line 28 - page 21, line 7) Therefore, Applicants respectfully request that documentary evidence supporting the official notice be supplied if this reject is to be maintained.

2.) Claims 15-16 and 18-23 were rejected in the Office Action under 35 U.S.C. §103(a) as being anticipated by Chung-Chih (US Patent no 6,470,456 B1) in view of Bland et al. (US Patent no 5,546,568) hereinafter "Bland". Applicants respectfully disagree as explained below.

As previously stated, the rejections under 35 U.S.C. 103(a) of claims dependent on claim 11 are predicated on the above-stated 35 U.S.C. 102(e) rejections cited against claim 11. Accordingly, claims 15-16 are patentable over Chung-Chih in view of Bland.

Claim 18 also includes limitations similar to claim 1. Therefore, claim 18 also includes limitations not taught or suggested by Chung-Chih. The addition of Bland does not cure these

deficiencies. Accordingly, claim 18 is patentable over Chung-Chih in view of Bland for at least the reasons stated above with regard to claim 1.

Claims 19-23 are dependent upon claim 18. Therefore claims 19-23 are also patentable over Chung-Chih in view of Bland for at least the reasons stated above.

In addition, Applicants also object to the use of the official notice to reject claims 20 and 21 using the official notice to indicate that the limitations would be obvious for one of ordinary skill in the art. As stated previously, Applicants believe this rejection to be improper in this case. Applicants respectfully request that documentary evidence supporting the official notice be supplied if this reject is to be maintained.

In view of the foregoing amendments and remarks, all pending claims are believed to be allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. Should the Examiner have any further issues regarding this application, the Examiner is requested to contact the undersigned attorney for the applicant at the telephone number provided below.

Respectfully submitted,

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